

**REMARKS**

The present claims relate to a pesticidal emulsifiable concentrate.

***Amendment summary***

Upon entry of this Amendment, Claims 1, 4, and 6-10 will be pending.

Claim 1 has been amended to incorporate the subject matter of Claim 5, which has been canceled. Specifically, Claim 1 now recites that the aromatic ester solvent (c) is selected from the group consisting of methyl benzoate, ethyl benzoate, propyl benzoate, ethyl 2-methylbenzoate, methyl 2-methylbenzoate, ethyl 3-methylbenzoate, ethyl 4-methylbenzoate, ethyl phenylpropionate and ethyl phenylacetate. Applicant notes that the butyl benzoate and the isoamyl benzoate that were previously recited within Claim 5 are not recited in presently-amended Claim 1. Support for this amendment is found on, e.g., page 6, line 20 to page 7, line 7 of the specification.

Claims 8 and 9 have been canceled.

Applicant respectfully submits that no new matter is presented by this Amendment, and entry of this Amendment is proper.

***Status of the claims***

Claims 1 and 4-10 have been rejected under 35 U.S.C. § 103 as allegedly being obvious over Schmitt et al. (U.S. Patent No. 5,398,300) in view of the abstract of Pallaske et al. (DE 4142134A) and the abstract of Mukai et al. (JP 53-075330) (hereinafter "Schmitt," "Pallaske," and "Mukai," respectively). This rejection was affirmed in a Board Opinion dated January 26, 2007.

***Response to rejection of Claims 1 and 4-10 under 35 U.S.C. § 103 based upon the combined teachings of Schmitt, Pallaske, and Mukai***

As an initial matter, Applicant notes that Claim 5 has been canceled, and accordingly respectfully submits that this rejection is moot insofar as it pertains to Claim 5.

Claim 1 recites a pesticidal emulsifiable concentrate comprising (a) 1 to 60% by weight of a pyrethroid compound; (b) 2 to 15% by weight of at least one surfactant; and (c) 15 to 90% by weight of at least one aromatic ester solvent represented by the formula:



wherein R represents non-aromatic group having 1 to 6 carbon atoms; Ar represents an aromatic group; and X represents a single bond or an alkylene group having 1 to 6 carbon atoms. Claim 1 also recites that the aromatic ester solvent (c) is selected from the group consisting of methyl benzoate, ethyl benzoate, propyl benzoate, ethyl 2-methylbenzoate, methyl 2-methylbenzoate, ethyl 3-methylbenzoate, ethyl 4-methylbenzoate, ethyl phenylpropionate, and ethyl phenylacetate.

Butyl benzoate fell within the scope of the aromatic ester solvent (c) recited within those claims on appeal before the Board, and the Board affirmed the previous rejection of Claims 1 and 4-10 by noting in part that Schmitt discloses the use of butyl benzoate as a solvent (see page 2 of the Board Opinion). The Examiner had advanced such an argument in the final Office Action of February 23, 2005. Thus, the position upheld by the Board was that Schmitt disclosed butyl benzoate, which fell within the scope of the claims then-pending.

Applicant respectfully submits that the present claims recite that the solvent is selected from the group consisting of methyl benzoate, ethyl benzoate, propyl benzoate, ethyl 2-methylbenzoate, methyl 2-methylbenzoate, ethyl 3-methylbenzoate, ethyl 4-methylbenzoate, ethyl phenylpropionate, and ethyl phenylacetate.

### *Conclusion*

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.114(C)  
Application No. 10/663,843

Atty Docket No.: Q77444

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.


Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

  
John T. Callahan  
Registration No. 32,607

Date: March 27, 2006